IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.542 of 2007

Usha .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The District Magistrate
   and District Collector
   Kancheepuram District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : No appearance

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

This is a petition for a writ of habeas corpus filed by one Usha, wife of Prabha alias Prabhu, son of Sarangapani (hereinafter referred to as the "detenu"), calling for the records relating to the proceeding dated 17.3.2007 made in B.D.F.G.I.S.S.V.No.18 of 2007 on the file of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short “the Act”) branding him as a "Goonda", to quash the same and to direct the second respondent to produce the body of the detenu now detained at Central Prison, Puzhal and to set him at liberty.

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2. The order of detention dated 17.3.2007 was passed on the basis of ground case in Crime No.43 of 2007 for alleged commission of offences under Sections 294(b), 384, 506(ii) of the Indian Penal Code. The allegation against the detenu was that on 28.2.2007 at about 10.00 a.m., when one Radhakrishnan, a roadside vendor selling tea and snacks at Otteri Bazaar in Kelambakkam Road, was at his shop, the detenu and one Ramesh came there and demanded mamool and threatened him stating that failing which, he would be killed. They were armed with knives. The detenu picked two numbers of hundred rupee notes from the complainant's shirt pocket. The knives they showed contained blood stains. The general public and shopkeepers, who witnessed this scattered and ran away on all sides in panic to safeguard their lives and property. The detenu and Ramesh whirled their knives over their heads and they sharpened their knives in such a way to create fire sparkles, and they went towards the TEAM Company. That apart, the detaining authority also took note of the three adverse cases pending against the detenu in Crime Nos.282/2004, 283/2004 and 42/2007 for the offences punishable under Sections 147, 148, 307, 302, 449 of the Indian Penal Code. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order branding him as a "Goonda".

3. There is no representation on behalf of the petitioner. We have heard the learned Additional Public Prosecutor for the respondents and perused the materials produced before us.

4. In the grounds of detention, the Detaining Authority has made a reference to the fact that the detenu is in remand in Otteri Police Station in connection with the ground case, namely, Crime No.43 of 2007 and there is a real possibility of his coming out on bail by filing a bail application. Whereas, it is apparent on the face of the records that the offences referred to in adverse cases, viz., for Sections 147, 148, 307, 302, 449 of the Indian Penal Code, are more serious when compared to the allegations in the ground case. It is well settled law that when the crime referred to in the adverse case is more grave in nature, there is no real possibility of the accused being released on bail in the adverse case and the same was not taken into consideration by the detaining authority. That apart, the detaining authority has also not considered whether the detenu was arrested and remanded in the adverse case and if he is arrested and remanded, the real possibility of the accused being released on bail in the last mentioned adverse case has also not been considered by the detaining authority, which attracts non-application of mind.

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For the aforesaid reason, we are inclined to allow this petition. The order of detention dated 17.3.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Prohibition and Excise Department
   State of Tamil Nadu
   Secretariat, Chennai-600 009.

2. The District Magistrate
   and District Collector
   Kancheepuram District.

3. The Superintendent of Central Prison,
   Puzhal, Chennai.

4. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor,
   High Court, Madras.

SCD(CO)
SR/17.9.2007

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